

OFFICE OF THE GENERAL COUNSEL
Division of Operations-Management

MEMORANDUM OM 09-60

May 1, 2009

TO: All Regional Directors, Officers-in-Charge,
and Resident Officers

FROM: Richard A. Siegel, Associate General Counsel

SUBJECT: Cost Saving Guidance for Remainder of Fiscal Year 2009

As you know, Congress has passed and President Obama has signed PL 111-8, the Omnibus Appropriations Act, 2009, containing the FY 2009 budget for the National Labor Relations Board. In light of this new budget, we have reviewed and made several modifications to outstanding cost containment instructions.

In so doing, we have been mindful of the imperative to conduct our operations in a fiscally and environmentally sensitive manner. Our statutory mission must always be our prime purpose and the over-riding factor that animates our activities. But, it is also the General Counsel's policy to retain limitations on case handling expenditures—particularly in the areas of travel and use and transportation of paper—where doing so would not materially adversely effect the quality or timeliness of our work. The application of this policy to specific cases is left to the sound discretion of the Regional Directors.

UNFAIR LABOR PRACTICE SETTLEMENTS AND ELECTION AGREEMENTS

The Field continues to enjoy remarkable success in securing settlements of merit unfair labor practice cases and election agreements to resolve pre-election disputes. The salutary effects of ULP settlements in resolving labor disputes and election agreements in facilitating the resolution of questions concerning representation are obvious and must be pursued. In addition, significant savings of Agency staff and budget resources result from high settlement and election agreement rates. It is also true that settlement early in the processing of a merit unfair labor practice case and the negotiation of an election agreement early in the processing of a merit representation case will result in the greatest saving in resources.

Accordingly, in all Regional Offices, and especially in those offices where performance in these areas is below the national experience, redoubled efforts should be made to improve performance. In this regard, training for all professional employees should continue to be conducted on settlement techniques when appropriate, settlement coordinators should be active and Regional Directors should be directly involved in settlement efforts. Please consult Memoranda OM 89-91, dated September 29, 1989; OM 97-81, dated December 9, 1997, and OM 98-33, May 12, 1998.

TRIALS AND REPRESENTATION CASE HEARINGS, COMMUNICATION WITH DIVISION OF JUDGES

For those trials that will be going forward despite exhaustive settlement efforts, the trial attorney should meet in person with witnesses on at least two occasions prior to the trial, with one occasion scheduled in coordination with travel to the hearing. In order to control costs, and in the discretion of the Regional Director, additional pre-trial, may be conducted in the Regional Office, by phone, videoconference or, if necessary, in a separate trip.¹ Witnesses whose presence at trial must be secured by subpoena at government expense should be required to appear only when their presence is required and should be released as soon thereafter as possible. Where appropriate, more than one attorney may be assigned to trials to provide training opportunities for our newer attorneys.

In addition, close communication with the Division of Judges with regard to the amendment of complaints and settlement efforts will ensure that ALJs schedule the appropriate number of hearing days and avoid unnecessary trips.

As always, Regions should be alert to canceling a scheduled court reporter so as to avoid unnecessary costs.

INVESTIGATIONS

Alternative Investigatory Techniques – As we have stated so often before, “face-to-face affidavits are the cornerstone of our investigations.” Nonetheless, there are occasions when appropriate use should be made of alternative investigatory techniques. Accordingly, questionnaires, telephone affidavits, videoconference interviews, where feasible, position statements and other techniques that reduce the travel costs and travel time usually associated with unfair labor practice investigations may be employed as appropriate. See Memoranda OM 95-15, dated August 22, 1995, and GC 02-02, dated December 6, 2001.² Thus, all Category I and some Category II cases may be

¹ See OM 06-16, “Quality Committee Report on FY 2004’s Litigation Losses – Credibility”, dated November 30, 2005, Section III, Pre-trial Preparation.

² GC 02-02 states, at. p. 3:

Face-to-face affidavits remain the cornerstone of our investigations. Experience has shown, however, that there are also alternative investigative techniques that can save time and resources without adversely affecting quality in certain types of cases. Especially where significant travel would otherwise be involved, such techniques save both considerable time and resources, thereby allowing Board agents to address other matters. While the need to utilize these techniques, such as questionnaires and telephone affidavits, was originally based upon a shortage of casehandling resources, even with adequate resources the use of these techniques in the investigation of certain types of cases should be continued in order to promote both efficiency and economy. In particular, all Regional Offices should utilize alternative techniques for all Category I cases and continue to use them for certain Category II cases, such as a Section 8(a)(5) or 8(b)(3) request for information or a Section 8(b)(1)(A) duty of fair representation allegation, which, as previously noted, will now be placed in Category II. Additionally, consistent with Memorandum OM 99-75, Regional Directors continue to have the discretion to use these techniques for other Category III and II cases, where appropriate. As stated in that memorandum:

investigated consistent with the guidance in those memoranda, unless the Regional Director determines that travel is essential to a quality investigation.

TRAVEL

Travel Coordinator - The Travel Coordinator in each Region should continue to manage Regional travel, clustering travel assignments for Board agents and avoiding nonessential travel while ensuring that appropriate, alternative investigative techniques are employed in lieu of travel when appropriate. Interregional coordination of travel for investigations is encouraged. Travel coordinators in contiguous Regions should be in frequent contact to permit agents traveling at the outskirts of their Regions to assist in investigations or elections at the outskirts of a contiguous region. Use of GSA cars when available and when cost effective should be encouraged. See Memorandum OM 03-89, dated August 1, 2003. When travel by air is warranted, the most cost efficient arrangements should be employed. Regions are encouraged to utilize GSA vehicles at their disposal whenever possible.

In pursuing the General Counsel's Outreach Initiative, we should combine outreach travel with travel for casehandling where possible. Similarly, full advantage should be made of the outreach materials we now have available online (see the Outreach section of the Operations page of the "Surfboard" intranet site). However, in situations where the outreach activity cannot be combined with casehandling travel, it is appropriate to permit travel to allow for the outreach.

Travel Responsibilities of the Parties – Under our current budget appropriation we are relaxing, but not eliminating, the tight travel restrictions imposed in recent years and thus can ease the travel burdens on the parties to our cases and their witnesses. Some travel restrictions will be kept in place, however, as fiscally prudent. Thus, except when Board agent travel can be coordinated, or under special circumstances, all institutional charging parties and their witnesses within 50 miles of the field office location should be encouraged to travel to the office to present evidence and give affidavit testimony. Charged parties and their witnesses located within 50 miles also should be strongly encouraged to travel to the office. Unfair labor practice and representation case hearings should be conducted in the field office in cases involving employers located within 50 miles from the field office city. Regional Office managers must exercise judgment where the presence of witnesses at hearings must be compelled by subpoena and costs associated with subpoenas make the conduct of the hearing in a location remote from the Region cost effective.

In situations where substantial travel will be necessary, the Regional Directors may exercise their discretion to take telephonic affidavits in circumstances where the affidavit is a supplemental statement, where individuals are providing evidence that corroborates evidence presented in a face-to-face affidavit or where there is a very high probability that the case has no merit.

(Footnotes omitted).

MAIL, WRITTEN COMMUNICATIONS

Private Delivery Services and Certified Mail - Regions should continue to exercise prudence in the use of Federal Express and certified mail, especially for interoffice mail. Saturday delivery should be requested only in the most compelling of circumstances. Of course, use of certified mail is still required insofar as the Rules and Regulations so provide. Note however, that return receipts ("green cards") are not generally required, are a considerable expense, and should only be used where the particular circumstances so dictate.

Electronic Mail - Use of e-mail in place of hard-copy correspondence to and from Headquarters and between field offices and with the parties is strongly encouraged in all circumstances.

SUPPLIES

- Office supplies and services should be purchased with Purchase Card. Use of the card ensures that the price at purchase is the price billed to the Agency and a rebate is paid to the Agency based upon the amount charged.
- Take advantage of discounts offered by vendors and creditors for processing and paying invoices prior to their due date. Consult Block 16 on the purchase orders to determine if such a credit is applicable.

PHONES AND PHOTOCOPY EQUIPMENT USE

Phone Lines - Disconnect unused leased phone lines. Phone line costs vary from location to location but average approximately \$35.00 per month. Generally, there is no cost to disconnect a phone line, but reactivation costs can be substantial. Thus, the Regions should balance these costs with anticipated savings. If a line is to be unused for at least 4 to 6 months, a net savings to the Agency would result if the line is disconnected, even if a reconnection charge is later incurred. Contact Rob White, NLRB Telecommunications, for information specific to your city.

Photocopy Machine Use - Use of office photocopy machines should be prudently monitored and abuse prevented. Double-sided photocopying should be used whenever possible. Our new scanning equipment and electronic document transmission should be fully exploited.

PAPER REDUCTION

Representation Case Decisions, Complaints and Notices of Hearings are often double-spaced. While this is not required by the Agency's rules and regulations, the Board's preference is that these documents be submitted double spaced and on single side copies. However, please consider using single space and double-sided copying for other file memoranda, such as final investigative memoranda and agenda minutes. As noted above, the use of e-mail in lieu of hard-copy transmission (including faxing) is strongly encouraged in all cases. In addition, copies of official documents such as complaints should be reduced to the minimum number necessary.

Shipments of paper case files to Headquarters units should continue to be by the most reasonably priced method consistent with casehandling priorities.

The Injunction Litigation Branch will continue to distribute 10(j) and 10(l) briefs by electronic means only. The Appellate Court Branch also will distribute briefs electronically. The Supreme Court Branch will distribute cert memos and briefs electronically but will also provide hard copy to the Region where the case originated.

We appreciate all of your efforts in controlling costs during the recent period of temporary funding and we appreciate your continuing efforts in the prudent conservation of scarce financial and environmental resources throughout the balance of the year and beyond. If you have any questions about the foregoing, please contact your Assistant General Counsel or Deputy or me.

/s/
R.A.S.

cc: NLRBU
Release to the Public

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